

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Genevieve Lamont	Team: Squad #8	CCRB Case #: 201903093	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 04/04/2019 9:30 PM	Location of Incident: 620 Foster Avenue	Precinct: 70	18 Mo. SOL 10/4/2020	EO SOL 5/21/2021	
Date/Time CV Reported Tue, 04/09/2019 1:35 PM	CV Reported At: CCRB	How CV Reported: Mail	Date/Time Received at CCRB Tue, 04/09/2019 1:35 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Kyle Brown	16513	957405	070 PCT
2. POM Brian Zupo	19878	955699	070 PCT
3. An officer			070 PCT
4. POM Salvatore Carcaterra	19393	962972	070 PCT
5. POM Michael Sher	07435	951244	070 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Dionnys Hernandez	03844	961814	070 PCT
2. POM Michael Guzzone	18429	958669	070 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Brian Zupo	Abuse: Police Officer Brian Zupo questioned § 87(2)(b)	
B.POM Kyle Brown	Abuse: Police Officer Kyle Brown questioned § 87(2)(b)	
C.POM Salvatore Carcaterra	Abuse: Police Officer Salvatore Carcaterra failed to provide § 87(2)(b) with a business card.	
D.POM Michael Sher	Abuse: Police Officer Michael Sher failed to provide § 87(2)(b) with a business card.	
E. An officer	Discourtesy: An officer spoke discourteously to § 87(2)(b)	
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		

Case Summary

On April 9, 2019, § 87(2)(b) filed the following complaint with the CCRB by mail.

On April 4, 2019, at approximately 9:30 p.m., § 87(2)(b) was walking home on Foster Avenue in Brooklyn. As § 87(2)(b) was walking, he was approached by two plainclothes officers, PO Brian Zupo and PO Kyle Brown of the 70th Precinct, who accused him of stealing a package from a FedEx drop box (**Allegation A and B: Abuse of Authority**; § 87(2)(g)). § 87(2)(b) became fearful while the officers were speaking with him, and he called 911. Four police officers, PO Michael Guzzone, PO Dionnys Hernandez, PO Salvatore Carcaterra, and PO Michael Sher from the 70th Precinct, responded to the scene. § 87(2)(b) spoke with PO Guzzone, and then requested business cards from the officers on scene. He requested business cards from PO Carcaterra and PO Sher, who both allegedly ignored the request (**Allegation C and D: Abuse of Authority**; § 87(2)(g)). One of these two officers allegedly told § 87(2)(b) “Fuck you” when he repeated the request (**Allegation E: Discourtesy**; § 87(2)(g)).

Body-worn camera (BWC) footage from PO Zupo, PO Brown, PO Guzzone, and PO Hernandez was obtained by the investigation [BR01 through BR04, respectively]. § 87(4-b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Brian Zupo questioned § 87(2)(b)

§ 87(2)(b)

Allegation (B) Abuse of Authority: Police Officer Kyle Brown questioned § 87(2)(b)

§ 87(2)(b)

It is undisputed that PO Zupo and PO Brown questioned § 87(2)(b). § 87(2)(b) testified that after parking his car at the corner of Ocean Parkway and Foster Avenue, he exited the vehicle and began walking down Foster Avenue. He was carrying a white Models plastic bag with sports pants in it, tucked under his arm. He did not stop walking at any point prior to being stopped. After about 30 seconds of walking, he heard someone yell “Yo” at him multiple times, but continued walking. PO Brown then exited an unmarked vehicle that had passed him and told § 87(2)(b) “You took that box from the FedEx box”, referring to the drop-off FedEx box on the corner of Ocean Parkway and Foster Avenue. § 87(2)(b) did not take any packages from this box, and explained in his interview that one could not do so, as it was strictly a drop-off box. § 87(2)(b) attempted to move around PO Brown to leave, but PO Zupo exited the police vehicle and blocked his path. § 87(2)(b) stated he did not feel free to leave, as PO Zupo and PO Brown were “corralling” him. The officers began to continuously issue commands to § 87(2)(b) which he stated he did not hear, as he was startled and could only focus on PO Brown’s gun. At one point, PO Zupo asked him, “What are you doing here?” He was not asked any questions about the package he was carrying. As the officers were speaking, § 87(2)(b) called 911 and told the operator that he feared for his life, as there were two individuals with guns. Once the responding units arrived, § 87(2)(b) crossed the street and PO Zupo and PO Brown followed. He later asked PO Zupo and PO Brown for their business cards, which they provided. § 87(2)(b) was not issued a summons or arrested in regards to this incident [BR05].

PO Zupo testified that as he and PO Brown were driving down Foster Avenue, he observed § 87(2)(b) off to his right 20 feet away, standing in front of a FedEx drop box. He could clearly see § 87(2)(b) who had his hand on the door of the drop box. He then observed § 87(2)(b) place a package inside his jacket pocket and walk away. PO Zupo did not see where this object came from. He stated that he believed § 87(2)(b) was mail-fishing, in which an individual searches mail boxes for valuable packages, a common occurrence in the area. PO Zupo did not have personal experience with mail fishing, but was aware of other officers who had. He did not suspect § 87(2)(b) of anything else. PO Zupo, who was still 20 feet away from § 87(2)(b), exited the police vehicle and called out, “Yo, can I talk to you?” The officers approached § 87(2)(b) who became belligerent, yelling that the officers had “no reason” to stop him. PO Zupo and PO Brown attempted to explain to him that it appeared he had taken something, to which § 87(2)(b) responded, “Don’t worry about my property.” § 87(2)(b) then called 911, and demanded the officer’s business cards. Both officers attempted to provide their business cards to § 87(2)(b) who refused to accept them. They then placed their cards on top of a building ledge and walked away as two to three police units arrived on scene. PO Zupo and PO Brown then left the scene. He stated that § 87(2)(b) was not considered stopped, as he was free to leave at any point [BR06].

PO Brown was largely consistent with PO Zupo, adding that he observed § 87(2)(b) for about 15 seconds standing in front of the drop box. He observed § 87(2)(b) place an 8x11 inch package inside his jacket pocket and walk away down Foster Avenue. He did not observe § 87(2)(b) make physical contact or take any actions with the drop box. He suspected that § 87(2)(b) was mail fishing, as the only function of the mail box was to drop off mail and mail fishing had been occurring in the 70th Precinct for over a year. PO Brown did not have personal experience with mail fishing, but was aware of instances of mail fishing occurring in the area. Both he and PO Zupo approached § 87(2)(b). As PO Zupo addressed § 87(2)(b) he responded “You guys aren’t doing this to me again.” PO Brown, PO Zupo and § 87(2)(b) then engaged in a back and forth conversation, in which both officers attempted to explain to § 87(2)(b) that they were stopping him regarding his package, but § 87(2)(b) continually interrupted them and eventually called 911. While on the phone, he asked the officers for their business cards, but refused to accept them when PO Brown and PO Zupo handed them to him. The officers placed the business cards on doorbell ringer of the apartment and then left the scene. PO Brown also stated that he and PO Zupo did not stop § 87(2)(b) as he was free to leave [BR07].

PO Zupo and PO Brown’s BWC’s captured both officers attempting to provide § 87(2)(b) with their business cards, which he refused to take [BR01 and BR02, respectively]. The initiation of the stop was not captured, nor was the conversation prior to § 87(2)(b) calling 911. Neither officer prepared a stop report for this incident.

New York v. Hollman 79 N.Y.2d 181 (1992) states that “the common-law right of inquiry is activated by a founded suspicion that criminal activity is afoot.” It further dictates questioning elevates to a common-law inquiry “once the officer asks more pointed questions that would lead the person approached to reasonably believe that he or she is suspected of some wrongdoing and is the focus of the officer’s investigation [BR08].

People v. Allen 489 N.Y.S 2d 749 (1985) determines that “innocuous behavior alone will not generate a founded or reasonable suspicion that a crime is at hand” [BR18].

§ 87(2)(g)

§ 87(2)(g)

Allegation (C) Abuse of Authority: Police Officer Salvatore Carcaterra failed to provide

§ 87(2)(b) **with a business card.**

Allegation (D) Abuse of Authority: Police Officer Michael Sher failed to provide

§ 87(2)(b) **with a business card.**

Allegation (E) Discourtesy: An officer spoke discourteously to § 87(2)(b)

It remains in dispute if PO Carcaterra and PO Sher refused to provide their business card to § 87(2)(b) or if either officer used discourteous language while doing so.

§ 87(2)(b) testified that when PO Guzzone and PO Hernandez arrived on scene, PO Guzzone provided his business card to him and informed him to ask the other officers for theirs. § 87(2)(b) asked PO Hernandez, PO Zupo, and PO Brown for their business cards, which they all provided. He then asked PO Carcaterra and PO Sher for their business cards. One of the two officers ignored § 87(2)(b) and reentered the police vehicle. § 87(2)(b) turned to the other officer and asked for his business card. The officer responded that they did not interact, to which § 87(2)(b) repeated his request. The officer then turned and yelled “Fuck you”. He entered the police vehicle and the officers left the scene [BR05]. § 87(2)(b) was unable to describe this officer and this part of the incident was not recorded on BWC, therefore the investigation pleaded the discourtesy allegation against “an officer”.

PO Carcaterra testified that upon arriving on scene, he observed police officers standing around, but did not recall how many. He did not speak with any civilians on scene. He did not speak with any of the officers on scene. No one asked for his business card and he did not say “Fuck you” to any civilian on scene [BR09]. PO Sher was consistent with PO Carcaterra, testifying that he did not observe any civilians on scene, nor did he speak with anyone, officer or civilian, on scene. He was not asked for his business card on scene and did not say “Fuck you” to a civilian [BR10].

PO Guzzone and PO Hernandez both testified that they provided their business cards to § 87(2)(b) upon his request [BR11 and BR12, respectively]. Neither officer observed an additional police unit respond to the scene or § 87(2)(b) speak with any other officer on scene. They did not see any officer refuse to provide their business card to § 87(2)(b) or tell him “Fuck you.” PO Zupo testified that he observed two to three police vehicles arrive on scene, but did not recall how many officers responded [BR06]. He did not see § 87(2)(b) interact with any of these officers. PO Brown testified that two police vehicle responded to the scene, and he observed the responding officers provide their business cards to § 87(2)(b) but left before observing any further interaction [BR07].

BWC footage from the officers did not capture the alleged incident [BR01 through BR04, respectively]. PO Carcaterra and PO Sher did not activate their BWC cameras for this incident, as there was no ongoing law enforcement activity upon their arrival § 87(2)(g) [BR09 and BR10, respectively].

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the second CCRB complaint § 87(2)(b) has been party to [BR13].
- PO Zupo has been a member of service for six years, and has been a subject in one previous CCRB complaint with one allegation, which was not substantiated. § 87(2)(g)
- PO Brown has been a member of service for four years, and has been a subject in one previous CCRB complaint and two allegations, neither of which were substantiated. § 87(2)(g)
- PO Sher has been a member of service for eight years, and has been a subject in nine CCRB complaints and 11 allegations, none of which have been substantiated. § 87(2)(g)
- PO Carcaterra has been a member of service for two years. This is the first complaint in which he has been a subject.

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- On September 18, 2019, a FOIL request was sent to the New York City Office of the Comptroller to determine if a Notice of Claim was filed regarding this incident, and the result will be added to the case file upon its receipt [BR14].
- According to the Office of Court Administration (OCA), § 87(2)(b) has no criminal conviction history in New York City [BR15].

Squad No.: _____

Investigator: _____

Signature	Print Title & Name	Date
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Squad Leader: _____

Signature	Print Title & Name	Date
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Reviewer: _____

Signature	Print Title & Name	Date
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